UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

THE STATE OF TEXAS; TEXAS HEALTH AND HUMAN SERVICES COMMISSION, Plaintiffs, v. CHIQUITA BROOKS-LASURE, in her official capacity as Administrator of the Centers for Medicare & Medicaid Services, *et al.*, Defendants.	§ § § § § § § § § § § §	Case No. 6:21-cv-00191-JCB

EXHIBIT A

December 17, 2021

The Honorable Joseph Biden
President of the United States of America
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

The Honorable Susan Rice
Assistant to the President for Domestic Policy and Director
Domestic Policy Council
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

The Honorable Xavier Becerra
Secretary
U.S. Department of Health & Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear President Biden, Director Rice, & Secretary Becerra:

On behalf of the hospitals, health systems, and health care providers we collectively represent, our associations urge the Biden Administration to direct the Centers for Medicare & Medicaid Services (CMS) to restore desperately needed funds to the Texas Medicaid program.

Over 5 million Texans are enrolled in Medicaid. Through innovative care models, the Texas Medicaid program serves this population and supports care for uninsured individuals. These groups include Texas's most vulnerable residents: its children, elderly, disabled, and indigent. Absent your intervention to restore Texas's receipt of supplemental payments, hospitals and their affiliated health care systems cannot sustainably provide the care that our medically underserved communities currently receive. Access to quality care will suffer. Indeed, for many providers, these payment programs represent the difference between operation and closure.

During the COVID-19 pandemic, Texas's Medicaid population grew significantly. Texas health care providers faced unprecedented demands, challenges, and constraints. Medicaid supplemental payment programs provided a lifeline, contributing approximately $9 billion to

sustain Texas's hospitals as they strove to meet the pressing needs of all Texans, especially those who face racial and ethnic health disparities.

Medicaid supplemental programs proved critical in the state's urban centers and along the border—areas where poverty rates are among the highest in the state. In Harris County, Medicaid supplemental payment programs provided over $2.6 billion. In Dallas County, Medicaid hospitals received over $1.4 billion. Along the border, in the Hidalgo Service Delivery Area—which includes the block of counties from Maverick south to Cameron—between 21% and 39% of the population depends on Medicaid. Supplemental payment programs contributed approximately $400 million to keep local providers solvent. Such funding enabled the high concentrations of Medicaid recipients in these areas to access lifesaving care.

Supplemental payment programs also helped sustain the state's 159 rural hospitals serving 3.1 million Texans, a disproportionate number of whom live in poverty. In a state that saw 27 rural hospitals in 22 communities close between January 2010 and February 2020—more than any other state in the nation during the same period—these funds kept providers' doors open.

In Texas, Local Provider Participation Funds (LPPFs)—local provider taxes approved and extended through state legislation and authorized under federal law—allow private providers to join public providers in being able to finance the nonfederal share and access critical federal matching dollars to help all Texas hospitals cover the costs of providing Medicaid and uninsured care.

LPPFs provide critical access to Medicaid financing to support critical services for uninsured and Medicaid-eligible Texans. In some areas of Texas, communities cannot sustain a governmental health care institution, and LPPFs are critical to sustain the local safety net. Even in areas that do have public hospitals and hospital districts, LPPFs enable private providers to more effectively provide care alongside the public system. Together, Texas' dedicated network of non-public and public providers rely heavily on LPPFs and the health care they make possible.

Although CMS has consistently approved Texas Medicaid supplemental payments funded by LPPFs since 2013, CMS has yet to approve this critical Medicaid funding to Texas because it argues that the LPPF contributors having private agreements, not involving government, prevents the federal government from providing matching dollars. CMS's objection is not only inconsistent with law and precedent, but it also represents an existential threat to all hospitals serving Texas's most at-risk populations, particularly as CMS seems to require an immediate cessation of LPPF funding. This situation leaves Texas's health system suddenly and severely underfunded.

Until now, CMS has never objected to similar private agreements anywhere in the nation. The U.S. Department of Health and Human Services (HHS) Office of the Inspector General issued a public report in 2003 concluding that wholly private arrangements between hospitals fell outside agency authority. More recently, CMS approved directed payment programs in Michigan and Tennessee even after these states signed onto a letter to CMS acknowledging awareness of private agreements. Regulated entities and stakeholders deserve consistent, predictable, and fair interpretation of applicable law.

CMS's current position resurrects an unsuccessful policy position included in the Medicaid Fiscal Accountability Regulation (MFAR), a rule the Trump Administration proposed and subsequently withdrew after a huge outcry from stakeholders and members of Congress on both sides of the aisle. CMS received over 10,000 comments in response to MFAR, many of which highlighted the devastating impact of the proposal and/or alleged that CMS lacked the statutory authority to justify its regulation of private agreements involving no state action. Although the administration oversaw the finalization of MFAR's withdrawal, CMS is now recycling this component of the abandoned proposal. Such action is concerning given that CMS gave no notice and engaged in no dialogue with states or providers regarding the revival of the unadopted and withdrawn rule.

At this critical juncture, we call upon the administration to remain consistent in its disavowal of MFAR's destructive policy. Each day that CMS cites this objection to withhold funding, Texas's hospitals face the growing risk that they will be unable to sustainably provide care.

Our members are extremely grateful for the administration's support throughout the pandemic, and we look forward to partnering with the White House and HHS to improve access to health care for all Americans. We ask that you ensure CMS restores the funding Texas hospitals desperately need at this time for the communities we serve.

Sincerely,

Stacy Wilson
President
Children's Hospital Association of Texas

Maureen Milligan
President/CEO
Teaching Hospitals of Texas

Larry L. Tonn
Principal
Texas Association of Voluntary Hospitals

Donald Lee
President
Texas Essential Healthcare Partnerships

John Hawkins
SVP, Advocacy & Public Policy
Texas Hospital Association

John Henderson
President/CEO
Texas Organization of Rural & Community Hospitals